



Atty. Dkt. No. 024918-0121

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Takahiro EGUCHI et al.
Title: DECOLORIZED YEAST CELL WALL
FRACTION
Appl. No.: 10/525,022
International Filing Date: 8/21/2003
371(c) Date: 10/06/2005
Patent No.: 7,531,346
Grant Date: 05/12/2009
Examiner: Kailash C. Srivastava
Art Unit: 1657
Confirmation Number: 3140

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

07/09/2009 SZEWDIE2 00000001 10525022

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Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on May 12, 2009 as U.S. Patent No. 7,531,346.

The Patent Office determined that the patent was entitled to 387 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA

statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 640 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	672 days
(b) Total Applicant delay:	32 days
Final PTA Determination:	640 days

Applicants therefore respectfully request that the patent be accorded 640 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be deferred or delayed until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date July 8, 2009

By

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Patent Term Adjustment Calculation Summary

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	08/21/2003	-915		
Edit Delete	International Filing Date	08/21/2003	-550		
Edit Delete	National Stage Transmittal (NOT all 371(c) Requirements Met)	02/18/2005	-3		
	PCT National Stage Commencement Date	02/21/2005	0		
Edit Delete	Notice of Missing Requirements	08/10/2005	170		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	10/06/2005	227		
Edit Delete	Response to Notice of Missing Requirements	10/06/2005	227		
Edit Delete	Application is Now Complete	10/06/2005	227		
	14 month From Application date	10/06/2005	653		
Edit Delete	Non-Final Office Action	11/19/2008	1,053	400	
	3 Year Period Starts	08/21/2003	1,095		
	Non-Final Office Action + 3 months	08/10/2005	1,144		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/12/2008	1,176		32
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	05/12/2008	1,299		
Edit Delete	Notice of Allowance	10/01/2008	1,318	(19)	
Edit Delete	Request For Continued Examination (including amendment)	11/19/2008	1,367	272	
	3 Year Period Stopped	11/19/2008	1,367		
Edit Delete	Notice of Allowance	01/13/2009	1,422		
Edit Delete	Issue Fee Paid	04/02/2009	1,501		
Edit Delete	Patent Grant Date	05/12/2009	1,541		
Totals:				672	32
PTA:				640	

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